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12 Shops, Inc. d.b.a. Marie Callender's #254

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 OUTERBRIDGE ACCESS
17 ASSOCIATION, SUING ON BEHALF OF
18 DIANE CROSS; and DIANE CROSS, An
19 Individual,

20 Plaintiff,

21 vs.

22 MARIE CALLENDER'S PIE SHOPS,
23 INC. d.b.a. MARIE CALLENDER'S #254;
24 PACIFIC BAGELS, LLC d.b.a.
25 BRUEGGARS BAGELS; COURTYARD
26 HOLDINGS, LP; PSS PARTNERS, LLC;
27 AND DOES 1 THROUGH 10, Inclusive,

28 Defendants.

Case No. 07-CV-2129 BTM (AJB)

**NOTICE OF MOTION AND MOTION
TO DISMISS**

*[Memorandum of Points And Authorities,
Request for Judicial Notice and Appendix
of Foreign Authorities filed concurrently
herewith]*

Date: January 25, 2008

Time: 11:00 a.m.

Ctrm: 15

****Per Chambers, no oral argument unless
required by the court.***

Complaint Filed: November 7, 2007

Trial Date: None Set

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TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 25, 2008, at 11:00 a.m., or as soon thereafter as the matter may be heard in the above-entitled court, located at 880 Front Street, Suite 4290, San Diego, California 92101, Courtroom 15, Defendant Marie Callender Pie Shops, Inc. dba Marie Callender's # 254 ("Marie Callender's") will and hereby does move the Court, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), to dismiss the Complaint filed by Plaintiffs Outerbridge Access Association ("Outerbridge") and Diane Cross ("Cross" and, collectively with Outerbridge, "Plaintiffs") in its entirety for lack of subject matter jurisdiction and failure to state a claim. Marie Callender's further requests that the Court decline to exercise supplemental jurisdiction over Plaintiffs' state law claims.

This Motion is and will be based on the following grounds: (1) Plaintiffs lack standing to seek relief with respect to any alleged barriers not related to Cross' particular disability of non-mobility; (2) Plaintiff Outerbridge lacks organizational standing to bring this lawsuit against Defendants on behalf of itself or its members because it has not suffered any injury-in-fact; and (3) retaining jurisdiction over state law claims in ADA lawsuits is inappropriate because, among other reasons, it undermines California's ability to interpret its own laws.

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1 This Motion will be based on this Notice of Motion and Motion, the
2 accompanying Memorandum of Points and Authorities, the Request for Judicial Notice
3 filed concurrently herewith, the pleadings and papers on file herein, and such further
4 arguments and papers as may be presented to the Court before or during the hearing.
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6 Dated: November 29, 2007

CALL, JENSEN & FERRELL
A Professional Corporation
Scott J. Ferrell
Lisa A. Wegner

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10 By: /s/Lisa A. Wegner
11 Attorneys for Defendant Marie Callender's
Pie Shops, Inc. d.b.a. Marie Callender's #254
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